Mohd Rafie bin Mohd Shafie (sole owner, Tetuan Chambers of Rafie Mohd Shafie & Assoc) v Jawatankuasa Tatatertib Peguam-Peguam & Anor

HIGH COURT (KUALA LUMPUR) — APPLICATION FOR JUDICIAL REVIEW NO 17D-13–01 OF 2014
ZALEHA YUSOF J
14 AUGUST 2014

Legal Profession — Disciplinary proceedings — Disciplinary board/committee — Advocate and solicitor appointed to represent client — Advocate and solicitor discharged himself when client refused to accept advice causing case to be struck out as he did not appear in court — Client complained against advocate and solicitor to Peguam Syarie Committee and Advocates and Solicitors Disciplinary Board — Whether Disciplinary Board and Committee had jurisdiction to hear complaint since there was earlier complaint to Peguam Syarie Committee

The plaintiff was an advocate and solicitor who was appointed by the second defendant to act for her. When the second defendant refused to accept the plaintiff's advice in respect of her divorce case, the plaintiff discharged himself which resulted with the second defendant's case for divorce being struck out as the second defendant was absent. The second defendant then lodged a complaint against the plaintiff with the Peguam Syarie Committee pursuant to r 18(1) of the Administration of Islamic Law (Federal Territories) Act 1993 ('Act 505'). The second defendant had also lodged almost the same complaint against the plaintiff with the Advocates and Solicitors Disciplinary Board under s 99 of the Legal Profession Act 1976 ('Act 166'). At the hearing of the complaint before the disciplinary committee ('DC'), the plaintiff raised a preliminary issue as to whether the disciplinary board ('DB') and the DC had the jurisdiction to hear the complaint in view of the fact that the second defendant had earlier filed a similar complaint to the Peguam Syarie Committee. The DC held that it had the jurisdiction to hear the complaint. Hence, the filing of this originating summons ('OS') by the plaintiff. In encl 1, the plaintiff sought, inter alia, to set aside the decision of the DC of Advocates and Solicitors while in encl 5, the first defendant sought to strike out encl 1 under O 18 r 19(1)(b) or (d) of the Rules of Court.

Held, allowing encl 5 and dismissing encl 1:

(1) The intitulement of the OS was made under O 55A of the Rules of Court 2012 ie appeal to the High Court under written law. The written law referred to was obviously Act 166. There was nothing in Act 166 which

talked about appeal from the decision of the DC. What it provided for was appeal against the decision of the DB under s 103E of Act 166 (see para 9).

(2) The OS was premature. The appropriate stage for the plaintiff to raise any dissatisfaction he may had with regard to a decision of the DC, whether on the preliminary issue or otherwise, was to wait for the DB to make a decision after the DC had completed its investigation and reported its findings and recommendations (see para 11).

(3) The plaintiff's argument that he should not be subjected to disciplinary proceedings under Act 166 as the complaint against him did not relate to his conduct as an advocate and solicitor, but to his conduct as a *peguam syarie* was without merit. The plaintiff could not divorce his position as an advocate and solicitor from his position as a *peguam syarie*. Apart from being a *peguam syarie*, the plaintiff was also an advocate and solicitor. As an advocate and solicitor, the plaintiff was subject to disciplinary actions pursuant to Act 166 by the DB for any misconduct by him in his professional capacity or otherwise (see para 12).

[Bahasa Malaysia summary

Plaintif adalah peguamcara dan peguambela yang telah dilantik oleh defendan kedua untuk mewakilinya. Apabila defendan kedua enggan menerima nasihat plaintif berkaitan kes perceraiannya, plaintif telah melepaskan dirinya yang mengakibatkan kes defendan kedua untuk perceraian dibatalkan kerana defendan kedua tidak hadir. Defendan kedua kemudiannya membuat aduan terhadan plaintif dengan Jawatankuasa Peguam Syarie menurut k 18(1) Akta Pentadbiran Undang-Undang Islam (Wilayah Persekutuan) 1993 ('Act 505'). Defendan kedua juga telah membuat aduan lebih kurang sama terhadap plaintif dengan Lembaga Tatatertib Peguamcara dan Peguambela di bawah s 99 Akta Profesion Undang-Undang 1976 ('Act 166'). Sewaktu perbicaraan terhadap aduan di hadapan jawatankuasa tatatertib ('JT'), plaintif membangkitkan isu awalan sama ada lembaga tatatertib ('LT') dan JT mempunyai bidang kuasa untuk mendengar aduan memandangkan defendan kedua telah terlebih dahulu memfailkan aduan yang serupa kepada Jawatankuasa Peguam Syarie. LT memutuskan ia mempunyai bidang kuasa untuk mendengar aduan. Maka, plaintif memfailkan saman pemula ('SP') ini. Dalam lampiran 1, plaintif memohon, antara lain, untuk mengetepikan keputusan Lembaga Tatatertib Peguamcara dan Peguambela manakala lampiran 5, defendan pertama memohon untuk membatalkan lampiran 1 di bawah A 18 k 19(1)(b) atau (d) Kaedah-Kaedah Mahkamah.

Diputuskan, membenarkan lampiran 5 dan menolak lampiran 1:

(1) 'Intitulement' SP dibuat di bawah A 55A Kaedah-Kaedah Mahkamah 2012 (KKM) iaitu rayuan kepada Mahkamah Tinggi di bawah

undang-undang bertulis. Undang-undang bertulis dirujuk adalah jelas Akta 166. Tiada apa di dalam Akta 166 yang menyatakan tentang rayuan daripada keputusan JT. Apa yang diperuntukkan adalah rayuan terhadap keputusan LT di bawah s 103E Akta 166 (lihat perenggan 9).

(2) SP adalah pramatang. Peringkat yang sesuai untuk plaintif membangkitkan apa-apa ketidakpuasan yang dia mungkin ada berkaitan dengan keputusan JT, sama ada terhadap isu awalan atau sebaliknya, adalah untuk menunggu LT membuat keputusan selepas JT telah menyelesaikan siasatannya dan melaporkan dapatannya dan pengesyorannya (lihat perenggan 11).

(3) Hujahan plaintif bahawa dia tidak sepatutnya dikenakan tindakan tatatertib di bawah Akta 166 kerana aduan terhadapnya tidak berkaitan kepada kelakuannya sebagai peguamcara dan peguambela, tetapi terhadap kelakuannya sebagai peguam syarie adalah tanpa merit. Plaintif tidak boleh memisahkan kedudukannya sebagai peguamcara dan peguambela daripada kedudukannya sebagai seorang peguam syarie. Selain daripada menjadi peguam syarie, plaintif juga adalah peguamcara dan peguambela. Sebagai seorang peguamcara dan peguambela, plaintif adalah tertakluk kepada tindakan tatatertib menuruk Akta 166 oleh LT untuk sebarang salah laku olehnya dalam kapasiti profesionalnya atau sebaliknya (lihat perenggan 12).]

Notes

For cases on disciplinary board/committee, see 9 *Mallal's Digest* (4th Ed, 2014 Reissue) paras 1506–1510.

Cases referred to

Messrs Choong & Co (suing As A Firm) & Ors v Advocates & Solicitors' Disciplinary Board & Ors [2004] 1 MLJ 385; [2004] 1 CLJ 574, HC (refd)
PP v Karpal Singh [2002] 2 MLJ 657, HC (refd)

Legislation referred to

Administration of Islamic Law (Federal Territories) Act 1993 r 18(1)
Legal Profession Act 1976 ss 99, 103E
Rules of Court 2012 O 18 r 19(1)(b), (d), O 55A

Jagjit Singh (Akberdin bin Abdul Kader with him) (Akberdin & Co) for the plaintiff.
Hoi Jack S'ng (Lee Hishammuddin Allen & Gledhill) for the defendants.

Zaleha Yusof J:

[1] In encl 1 of the originating summons ('OS'), the plaintiff seeks, inter alia, to set aside the decision of the Disciplinary Committee of Advocates and

Solicitors dated 28 February 2014 which decided that the disciplinary committee and/or the disciplinary board has the jurisdiction to hear and/or investigate complaints lodged by the second defendant against the plaintiff.

[2] In encl 5, the first defendant seeks to strike out encl 1 under O 18 r 19(1)(b) or (d) of the Rules of Court 2012.

BACKGROUND

[3] The plaintiff is an advocate and solicitor and the sole proprietor of Chambers of Rafie Mohd Shafie & Assoc. The plaintiff was appointed by the second defendant to act for her in the following proceedings commenced by her:

(a) Kuala Lumpur Shariah Subordinate Court Summons No 14003–014–0717 of 2010 for the dissolution of her marriage; and

(b) Kuala Lumpur Shariah High Court Summons No 14700–017–0144 of 2011 for distribution of the assets of the marriage.

[4] When the second defendant refused to accept the plaintiff's advice in respect of her divorce case, the plaintiff discharged himself on 5 June 2012, which resulted with the second defendant's case for divorce was struck out on 6 June 2012 as the second defendant was absent. The second defendant then lodged a complaint against the plaintiff with the Peguam Syarie Committee on 2 July 2012 vide a letter dated 29 June 2012; pursuant to r 18(1) of the Administration of Islamic Law (Federal Territories) Act 1993 ('Act 505') which reads as follows:

> Any complaint concerning the conduct of any Peguam Syarie in his professional capacity shall be made to the Committee (ie Syariah Committee).

[5] On 17 October 2012, the second defendant had also lodged almost the same complaint against the plaintiff with the Advocates and Solicitors Disciplinary Board under s 99 of the Legal Profession Act 1976 ('Act 166').

[6] At the hearing of the complaint before the disciplinary committee ('DC') which commenced on 14 February 2014, the plaintiff raised a preliminary issue as to whether the disciplinary board ('DB') and the DC have the jurisdiction to hear the complaint in view of the fact that the second defendant had earlier filed a similar complaint to the Peguam Syarie Committee.

[7] The DC, by a majority decision on 28 February 2014 had held that it has the jurisdiction to hear the complaint. Hence, the filing of this OS by the plaintiff.

DECISION

[8] I shall first deal with encl 5. The main issue here, in my opinion is whether encl 1 is premature.

[9] If one looks at the intitulement of the OS, it was made under O 55A of the Rules of Court 2012, ie appeal to the High Court under written law. The written law referred to is obviously Act 166. I have perused Act 166 and find that there is nothing in Act 166 which talks about appeal from the decision of the DC. What it has provided for is appeal against the decision of the disciplinary board under s 103E of Act 166.

[10] In *Messrs Choong & Co (suing as a Firm) & Ors v Advocates & Solicitors' Disciplinary Board & Ors* [2004] 1 MLJ 385 at p 391; [2004] 1 CLJ 574 at p 580, Raus Sharif J (as he then was) had held as follows:

> The Court of Appeal in *Cheah Fong Chin v Lembaga Jurutera Malaysia* [1999] 3 MLJ 110 ; [1999] 3 CLJ 242 held that to the effect that as a matter of judicial policy, the court should not intervene but should allow the domestic tribunal to proceed and decide on the mater. Similarly, in this case, the Disciplinary Committee and the Disciplinary Board should be allowed to proceed with the disciplinary proceedings against the plaintiffs. Thereafter, the appeal process. Thus, I am of the view that the plaintiffs must exhaust their domestic statutory remedies and not short circuit the statutory disciplinary and appellate process. I, therefore, dismissed the plaintiffs' application with costs.

[11] Hence, on this ground alone, I am of the view that the OS is premature. I therefore agree with the first defendant that the appropriate stage for the plaintiff to raise any dissatisfaction he may have with regard to a decision of the disciplinary committee, whether on the preliminary issue or otherwise, is to wait for the disciplinary board to make a decision after the disciplinary committee has completed its investigation and reported its findings and recommendations.

[12] In my view, the plaintiff's argument that he should not be subjected to disciplinary proceedings under Act 166 as the complaint against him do not relate to his conduct as an advocate and solicitor, but to his conduct as a *peguam syarie* is without merit. The plaintiff cannot divorce his position as an advocate and solicitor from his position as a *peguam syarie*. Apart from being a *peguam syarie*, the plaintiff is also an advocate and solicitor. As an advocate and solicitor, the plaintiff is subject to disciplinary actions pursuant to Act 166 by the disciplinary board for any misconduct by him in his professional capacity or otherwise. As observed by the High Court in *Public Prosecutor v Karpal Singh* [2002] 2 MLJ 657, an advocate and solicitor may be disciplined even though

the conduct or the act in question had nothing to do with his character as a solicitor.

CONCLUSION

[13] Based on the above, I totally agree with the first defendant and therefore allow encl 5. Consequently, encl 1 is dismissed with no order as to cost.

Allowing encl 5 and dismissing encl 1.

Reported by Afiq Mohamad Noor